

**SUPREME COURT OF FLORIDA
TALLAHASSEE, FLORIDA**

BRADLEY WESTPHAL,

Petitioner,

CASE NO.: SC13-1930

vs.

**Lwr. Tribunal: 1D12-3563
OJCC Case No. 10-019508SLR**

**CITY OF ST. PETERSBURG/
CITY OF ST. PETERSBURG
RISK MANAGEMENT and
STATE OF FLORIDA,**

Respondents. _____ /

**NOTICE
OF
SUPPLEMENTAL AUTHORITY**

COMES NOW the petitioner, Bradley Westphal, by and through his undersigned co-counsel, Richard A. Sicking, and files this notice of supplemental authority and for grounds would state:

This notice is filed pursuant to Fla. R. App. P. 9.225.

This supplemental authority is a letter from members of the Congress of the United States of America to Thomas E. Perez, United States Secretary of Labor, dated October 20, 2015, which stated:

State workers' compensation laws are no longer providing adequate levels of support and compensation

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for workers injured on the job; instead, costs are increasingly being shifted to the American taxpayers to foot the bill. (October 20, 2015, Congressional letter, at page 1).

This supplemental authority was discovered after the filing of the petitioner's reply brief as this letter was not written until October 20, 2015.

This supplemental authority is significant to the question of whether the reduction of available benefits is inadequate for the seriously injured, such that the current Florida Workers' Compensation Law is not a reasonable alternative under the Florida Constitution.

Respectfully submitted,


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Richard A. Sicking

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing has been furnished by e-mail this 27 day of October, 2015, to: Jason L. Fox, Esq. (Jason@bichlerlaw.com), Bichler, Kelley, Oliver, Longo & Fox, PLLC, co-counsel for petitioner, 13031 West Linebaugh Avenue, Tampa, FL 33626; Jeannine S. Williams, Esq. (eservice@stpete.org), Office of the City Attorney, counsel for respondent, City of St. Petersburg, P.O. Box 2842, St. Petersburg, FL 33731; Allen C. Winsor, Chief Deputy Solicitor General (allen.winsor@myfloridalegal.com), and Rachel E. Nordby, Esq. (rachel.nordby@myflorida legal.com), co-counsel for the respondent State of Florida, Office of the Attorney General, The Capitol, PL-01, Tallahassee, FL 32399-1050; William H. Rogner, Esq. (wrogner@ hrmcw.com), Hurley, Rogner, Miller, Cox, Waranch & Westcott, P.A., 1560 Orange Ave., Suite 500, Winter Park, FL 32789; Richard W. Ervin, III, Esq. (richardervin @flappeal.com), Fox & Loquasto, P.A., 1201 Hays Street, Suite 100, Tallahassee, FL 32301; Andre M. Mura, Esq. (andre.mura@cclfirm.com). Center for Constitutional Litigation, P.C., 777 6th Street, N.W., Suite 520, Washington, DC 20001; Bill McCabe, Esq. (billjmccabe@earthlink.net), 1250 South Highway 17/92, Suite 210, Longwood, FL 32750; Geoffrey Bichler, Esq. (geoff@bichlerlaw.com), Bichler, Kelley, Oliver, Longo &

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Richard A. Sicking

Congress of the United States
Washington, DC 20510

October 20, 2015

The Honorable Thomas E. Perez
Secretary
United States Department of Labor
200 Constitution Avenue, N.W.
Washington, DC 20210

Dear Secretary Perez:

As Members of Congress who are concerned about a pattern of detrimental changes to state workers' compensation laws and the resulting cost shift to public programs like Social Security Disability Insurance, we are writing to express our interest in working with the Administration to strengthen the safety net for workers injured on the job and improve the oversight of state workers' compensation systems.

Workers' compensation systems were created to provide an injured worker with all lost wages, medical care, and rehabilitation costs under the principle that workers would receive timely benefits that would replace their lost wages in exchange for giving up the right to sue employers for their injury. States workers' compensation laws were assessed at the national level in 1972 with the creation of the National Commission on State Workmen's Compensation Laws ("Commission") by President Nixon. The Commission found that state laws were "inadequate and inequitable" and sought to remedy this by developing 19 essential standards for workers' compensation and recommending that these standards be federally mandated. Federal standards were never enacted, but the Department of Labor (DOL) annually reported on states' compliance with these standards from 1972 until 2004.

Over the past decade since DOL reporting ended, the erosion of workers' protections has snowballed as states reduced workers' compensation. This is highlighted in a series of March 2015 reports by ProPublica and NPR, which found that since 2003 legislators in 33 states have enacted changes to workers' compensation laws that either reduce benefits or make it more difficult for workers to qualify for them. Today, only 7 states follow at least 15 of the Commission's 19 recommendations and 4 states comply with less than half of them.

The race to the bottom now appears to be nearly bottomless, as some states are adopting "opt-out" laws which enable employers to set up their own ERISA-based workers' compensation programs where employers can establish certain exclusions, heightened thresholds for causality and abbreviated time periods for employees to report an injury. Where injured employees want to appeal an employer's decision, opt-out plans permit an employer-controlled appeals process and injured employees could lose access to state courts or workers' compensation commissions. Federal court review of these ERISA plans is constrained inasmuch as courts cannot evaluate the adequacy of a plan's benefits, and review is limited to a determination of whether the employer's conduct was arbitrary and capricious in interpreting their plan. This raises serious concerns.

State workers' compensation laws are no longer providing adequate levels of support and compensation for workers injured on the job; instead, costs are increasingly being shifted to the American taxpayers to foot the bill. More and more workers have been forced to turn to Social Security Disability Insurance

(SSDI), Medicare and Medicaid, and food stamps to cover the lost wages and medical costs that are no longer being adequately provided by workers' compensation.

A March 2015 study by the Occupational Safety and Health Administration (OSHA) reports that employers now cover only about 20% of the overall costs of a workplace injury, with the workers themselves, their families, and their private health insurance covering nearly 63% of the costs, and taxpayer-supported safety-net programs covering the remaining. OSHA found that "an accumulating body of evidence shows that at least part of the growth in SSDI benefit payments is attributable to the program's subsidy for work injuries and illnesses."

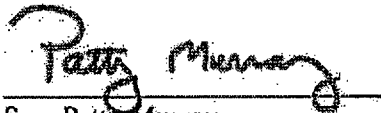
A study of SSDI and workers' compensation benefits found that 7% of new SSDI beneficiaries in New Mexico in 2010 were due to workplace injuries. If these findings are applied to the rest of the country, the study estimated that 70,000 of the roughly 1 million new SSDI beneficiaries each year due to workplace injuries would account for roughly \$12 billion of costs being shifted onto the SSDI rolls each year.

The changes to workers' compensation over the last decade have been pushed by big businesses and insurance companies on the premise that costs are out of control. However, the ProPublica/NPR investigation found that employers are paying the lower rates for workers' compensation insurance than at any time since the 1970s, even as the costs of health care have increased dramatically. As a result of these "reforms," many of those employees most in need of assistance have had their benefits reduced to a small fraction of their pre-injury income and far too frequently are forced out of the middle class and into poverty.

The Bureau of Labor Statistics (BLS) estimates that nearly three million serious occupational injuries and illnesses occur and approximately 4,500 workers are killed on the job each year. The magnitude of the cost shift to taxpayers from employers coupled with a race to the bottom in substandard benefits should not be ignored any longer; we owe it to the American workers and taxpayers to ensure workers have both a safe workplace and adequate compensation should an accident occur.

We believe the Department of Labor should take a renewed interest strengthening oversight of state workers' compensation programs by using the agency's expertise and authorities. In particular, we would welcome a report from the Department on how it will reinstitute oversight of state workers' compensation programs, what areas it intends to address, and whether added authorities are needed to better ensure that the interests of injured workers and taxpayers are protected.

Sincerely,



Sen. Patty Murray
Ranking Member
Senate HELP Committee




Rep. Robert C. "Bobby" Scott
Ranking Member
House Education and the Workforce Committee




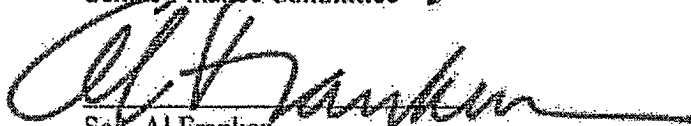
Sen. Bernard Sanders
Ranking Member
Senate Budget Committee




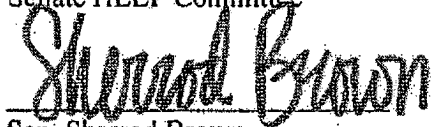
Rep. Chris Van Hollen
Ranking Member
House Budget Committee



Sen. Ron Wyden
Ranking Member
Senate Finance Committee


Rep. Sander Levin
Ranking Member
House Ways & Means Committee


Sen. Al Franken
Ranking Member
Subcommittee on Employment and
Workplace Safety
Senate HELP Committee


Rep. Frederica S. Wilson
Ranking Member
Subcommittee on Select Revenue Measures
House Education and the Workforce Committee


Sen. Sherrod Brown
Ranking Member
Social Security, Pensions, and
Family Policy Subcommittee
Senate Finance Committee


Rep. Xavier Becerra
Ranking Member
Subcommittee on Social Security
House Ways & Means Committee